IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Tr.P(Crl.).No. 104 of 2005()

[S.T.No.1756/2004 OF J.F.C.M-II, SULTHAN BATHERY]

PETITIONER: ACCUSED:

S. RATNAKARA RAVU,
S/O. D. SURVOTHAMA RAVU, KANDATHIL PARAMBIL HOUSE,
C.M.C.IV, CHERTHALA POST, ALAPPUZHA DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: COMPLAINANT & STATE:

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1. ASOK KUMAR, S/O. KUTTAPPAN,
MUTTATHIL HOUSE, KOLERI P.O.,SULTHAN BATHERY TALUK

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.RAJESH VIJAYAN
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 06/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Tr.P.C.No.104 of 2005

Dated this the 6th day of December 2006

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The first respondent herein has initiated the proceedings at the court of the Judicial First Class Magistrate Court-II, Sulthan Bathery. The petitioner is a permanent resident of Cherthala. He prays that the case may be transferred to any court at Cherthala. The petitioner is sick and laid up. He cannot proceed all the way to Sulthan Bathery to attend the prosecution. This, in short, is the plea. It is further contended that the cheque was handed over to one Kunjachan and the respondent/complainant is only a name lender for the said Kunjachan. In order to harass and victimise the petitioner, such a false claim is made. For these reasons, it is prayed that transfer may be directed, as prayed for.

2. The respondent has entered appearance through counsel. He resisted the prayer for transfer. It is contended that there is absolutely no substance in the said prayer. There is no nexus between Kunjachan and the respondent herein. In fact, the counsel submits that the notice of demand issued in compliance with the mandate of Section 138 of the N.I.Act was not responded to at all and the present

plea was not contemplated at any prior point of time. In these circumstances, to cater to the convenience of the petitioner, the respondent may not be forced to conduct the case at Cherthala. The learned counsel for the petitioner fairly submits that as per the dictum in K.Bhaskaran v. Sankaran Vaidhyan Balan [AIR 1999 SC 3762], courts at Wayanadu have jurisdiction to adjudicate on the dispute under Section 138 of the Negotiable Instruments Act.

2. I do not in these circumstances find any merit in the prayer for transfer. However, I take note of the submissions of the learned counsel for the petitioner that the petitioner is sick and laid up. The petitioner can certainly apply for exemption from personal appearance before the learned Magistrate. I find no reason why the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. No court should unnecessarily and ritualistically insist on the personal appearance of indictees unless the progress of the case compellingly demands such personal presence, especially so in a prosecution under Section 138 of the Negotiable Instruments Act.

3. With the above observations, this Transfer Petition (Criminal) is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006